

Electronically Recorded

Official Public Records

Tarrant County Texas

2009 Jun 22 02:31 PM

Fee: \$ 48.00

Submitter: LANDATA

D209164827

9 Pages

Prepared By:



Suzanne Henderson

Aldrich B. Davis, Esquire
Counsel to SMBC Leasing and
Finance, Inc.

When Recorded Mail To:

Aldrich B. Davis, Esquire,
Ober, Kaler, Grimes & Shriver
120 East Baltimore Street, 9th Floor
Baltimore, Maryland 21202-1643

(Space above for recorder's use only)

**AMENDMENT NO. 2
TO LEASE SUPPLEMENT (LAND)
AND MEMORANDUM OF LEASE AND DEED OF TRUST
(Arlington, Tarrant County, Texas)**

THIS AMENDMENT NO. 2 (this "Amendment") is made as of the 20th day of June, 2009, among (i) SMBC LEASING AND FINANCE, INC., successor in interest to Sumitomo Bank Leasing and Finance, Inc. ("Lessor"), and (ii) BRIDGESTONE RETAIL OPERATIONS, LLC, formerly known as BFS RETAIL & COMMERCIAL OPERATIONS, LLC, a Delaware limited liability company, successor in interest to Bridgestone/Firestone, Inc. ("Lessee").

WITNESSETH:

Pursuant to a Master Lease and Security Agreement dated as of December 29, 1997 (the "Original Lease") by and between the Lessor and the Lessee, Lessor agreed to lease certain real property located in Arlington, Tarrant County, Texas (the "Land") (more particularly described in Exhibit A attached hereto) and certain improvements to be constructed thereon (collectively, the "Improvements;" the Land and all improvements now or hereafter located thereon, including, without limitation, the Improvements, being hereinafter collectively referred to as the "Property"). In connection with the Original Lease, Lessor and Lessee also executed and delivered, among other things, a Lease Supplement (Land) and Memorandum of Lease and Deed of Trust dated September 29, 1998 and recorded among the real property records of Tarrant County, Texas as County Clerk's file no. D198226227 (as the same may from time to time be amended, restated, supplemented or otherwise modified, the "Memorandum of Lease").

Pursuant to an Amended and Restated Master Lease and Security Agreement dated as of June 20, 2004 by and among the Lessor and the Lessee (which Amended and Restated Master Lease and Security Agreement, as heretofore modified, amended, restated or supplemented, is hereinafter referred to as the "First Amended Lease"), the Original Lease was amended and restated to (among other things) (a) provide for the renewal of the term of the Original Lease, (b) provide for a Renewal Advance (as defined in the First Amended Lease), and (c) modify

certain other terms and provisions of the Original Lease. In connection with the First Amended Lease, Lessor and Lessee also executed and delivered, among other things, Amendment No. 1 to Lease Supplement (Land) and Memorandum of Lease and Deed of Trust dated as of June 20, 2004 and recorded among the real property records of Tarrant County, Texas as County Clerk's file no. D204202518.

Pursuant to a Second Amended and Restated Master Lease and Security Agreement of even date herewith by and between the Lessor and the Lessee (which Second Amended and Restated Master Lease and Security Agreement, as the same may hereafter be otherwise modified, amended, restated or supplemented, is hereinafter referred to as the "Lease"), the First Amended Lease was amended and restated to (among other things) (a) provide for a second optional renewal of the term of the First Amended Lease and the exercise thereof, (b) provide for another Renewal Advance (as defined in the Lease), and (c) modify certain other terms and provisions of the First Amended Lease. As used herein, the term "Operative Documents" means the Lease, the Memorandum of Lease, and all of the other Operative Documents (as defined in the Lease).

The parties hereto have agreed to further amend the Memorandum of Lease pursuant to this Amendment to (among other things) confirm the extension of the term of the Lease. Certain capitalized terms used and not defined herein shall have the respective meanings ascribed thereto in the Lease.

AGREEMENTS

1. Recitals. The Lessor and the Lessee each acknowledge that the recitals set forth above are incorporated by reference into the body of this Amendment.

2. Amendments to the Memorandum of Lease. (a) Effective as of the date hereof, the reference to the word "Lease" in the Memorandum of Lease shall mean the Second Amended and Restated Master Lease and Security Agreement dated as of June 20, 2009, as the same may be restated, amended, supplemented or otherwise modified from time to time.

(b) Effective as of the date hereof, the Memorandum of Lease is hereby amended by deleting Section 1 (Certain Terms) in its entirety and inserting the following new Section 1 in lieu thereof:

"Section 1. Certain Terms. Capitalized terms used but not otherwise defined in this Memorandum have the meanings specified in Appendix 1 to the Lease (as hereinafter defined). As used herein, the term "Lease" shall mean the Second Amended and Restated Master Lease and Security Agreement, dated as of June 20, 2009 (as amended, supplemented, amended and restated or otherwise modified from time to time) by and between the Lessee and the Lessor. The rules of interpretation specified in Appendix 1 to the Lease (as such Appendix 1 may be amended, supplemented, amended and restated or otherwise modified from time to time) shall apply to this Memorandum."

(c) Effective as of the date hereof, the Memorandum of Lease is hereby amended by deleting Section 3 (Lease Term) in its entirety and inserting the following new Section 3 in lieu thereof:

“Section 3. Lease Term. The term of this Memorandum (the “Term”) shall begin on August 20, 1999 and shall end on the Expiration Date under the Operative Documents (which shall be June 20, 2014), unless the Term with respect to the Property is earlier terminated in accordance with the provisions of the Lease or the other Operative Documents. For and in consideration of good and valuable consideration paid by the Lessee to the Lessor as described in the Lease, the Lessor hereby grants to the Lessee the right to purchase the Property or to market and sell the Property during the Term of this Memorandum on the terms set forth in the Lease.”

(d) The original principal amount secured by the Memorandum of Lease was \$499,209.84. Pursuant to the First Amended Lease, the Lessor and the Lessee agreed to increase the principal amount secured by the Memorandum of Lease by the amount of \$55,078.55 to \$554,288.39 and such principal amount shall continue to be secured thereby.

3. Fees, Costs and Expenses. Lessee shall pay to Lessor on demand all costs and expenses both now and hereafter paid or incurred with respect to the preparation, negotiation, execution, administration and enforcement of this Amendment and all documents related thereto, including, without limitation, attorney's fees and expenses, recording costs, recordation and other taxes, and costs of record searches and title company premiums (if any) and costs, all of which costs and expenses shall be reimbursed through a Renewal Advance.

4. Headings. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Amendment.

5. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and assigns.

6. Counterparts. This Amendment may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute but one and the same instrument. The parties further agree that facsimile signatures shall be binding on all parties and have the same force and effect as original signatures.

7. Governing Law. NOTWITHSTANDING ANYTHING IN THE MEMORANDUM OF LEASE TO THE CONTRARY, THE MEMORANDUM OF LEASE AND THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF, PROVIDED THAT MATTERS RELATING TO THE CREATION, PERFECTION, PRIORITY OR

ENFORCEABILITY OF ANY AND ALL LIENS, SECURITY INTERESTS AND LEASEHOLD ESTATES THAT AFFECT PROPERTY IN TEXAS AND THE RIGHTS AND REMEDIES PROVIDED FOR THEREIN AND HEREIN WITH RESPECT THERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. WITHOUT LIMITING THE FOREGOING, IN THE EVENT THAT THE LEASE IS DEEMED TO CONSTITUTE A FINANCING, WHICH IS THE INTENTION OF THE PARTIES, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, SHALL GOVERN THE CREATION, TERMS AND PROVISIONS OF THE INDEBTEDNESS EVIDENCED HEREBY, BUT THE LIEN CREATED THEREBY AND HEREBY AND THE CREATION AND THE ENFORCEMENT OF SAID LIEN SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS.

8. Severability. In case one or more provisions contained in this Amendment shall be invalid, illegal, or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall remain effective and binding and shall not be affected or impaired thereby.

9. Amendments. This Amendment may be amended, modified or supplemented only by written agreement signed by all parties hereto. No provision of this Amendment may be waived except in writing signed by the party against whom such waiver is sought to be enforced.

10. Effective Date. This Amendment shall be effective immediately upon the execution and delivery of this Amendment by all persons who are parties hereto.

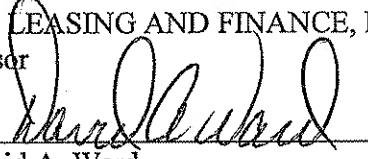
11. Amendment Only. This Amendment is only an agreement amending and modifying certain provisions of the Memorandum of Lease. All of the provisions of the Memorandum of Lease and the other Operative Documents are incorporated herein by reference and shall remain and continue in full force and effect, as amended by this Amendment. The Lessee hereby ratifies and confirms all of its obligations, liabilities and indebtedness under the provisions of the Memorandum of Lease, as amended by this Amendment. The Lessee and the Lessor agree it is their intention that nothing herein shall be construed to extinguish, release or discharge or constitute, create or effect a novation of, or an agreement to extinguish (a) any of the obligations, indebtedness and liabilities of the Lessee, or any other party under the provisions of the Memorandum of Lease or under the other Operative Documents, or (b) any assignment or pledge to the Lessee of, or any security interest or lien granted to the Lessor in or on, any collateral and security for such obligations, indebtedness and liabilities.

[Signatures Begin Next Page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to Lease Supplement (Land) and Memorandum of Lease and Deed of Trust to be duly executed by duly authorized representatives thereunto duly authorized as of the day and year first above written.

SMBC LEASING AND FINANCE, INC.
as Lessor

By: _____


David A. Ward
President

BRIDGESTONE RETAIL OPERATIONS, LLC
as Lessee

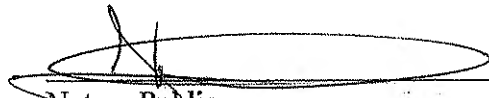
By: _____

Eugene E. Stephens
Assistant Treasurer

[Acknowledgements Follow on Next Page]

STATE OF New York)
) ss:
COUNTY OF New York)

The foregoing Amendment No. 2 to Lease Supplement (Land) and Memorandum of Lease and Deed of Trust was acknowledged before me, the undersigned Notary Public, in the County of New York, New York, this 16th day of June, 2009, by David A. Ward, President of SMBC LEASING AND FINANCE, INC., a Delaware corporation, on behalf of the corporation.



Notary Public
JERRY H. WECHSLER
Notary Public, State of New York
No. 01WE6046972
Qualified in Kings County
Commission Expires August 21, 20 10

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing Amendment No. 2 to Lease Supplement (Land) and Memorandum of Lease and Deed of Trust was acknowledged before me, the undersigned Notary Public, in the County of _____, _____, this ____ day of _____, 2009, by Eugene E. Stephens, Assistant Treasurer of BRIDGESTONE RETAIL OPERATIONS, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires: _____

[SEAL]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to Lease Supplement (Land) and Memorandum of Lease and Deed of Trust to be duly executed by duly authorized representatives thereunto duly authorized as of the day and year first above written.

SMBC LEASING AND FINANCE, INC.
as Lessor

By: _____
David A. Ward
President

BRIDGESTONE RETAIL OPERATIONS, LLC
as Lessee

By: Eugene E. Stephens
Eugene E. Stephens
Assistant Treasurer

[Acknowledgements Follow on Next Page]

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing Amendment No. 2 to Lease Supplement (Land) and Memorandum of Lease and Deed of Trust was acknowledged before me, the undersigned Notary Public, in the County of _____, this _____ day of _____, 2009, by David A. Ward, President of SMBC LEASING AND FINANCE, INC., a Delaware corporation, on behalf of the corporation.

Notary Public

My Commission Expires: _____

[SEAL]

STATE OF Tennessee)
) ss:
COUNTY OF Davidson)

The foregoing Amendment No. 2 to Lease Supplement (Land) and Memorandum of Lease and Deed of Trust was acknowledged before me, the undersigned Notary Public, in the County of Davidson TN, this 16th day of June, 2009, by Eugene E. Stephens, Assistant Treasurer of BRIDGESTONE RETAIL OPERATIONS, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Glenda S. Lovings
Notary Public

My Commission Expires: May 6, 2013

[SEAL]



Exhibit A

Legal Description

Lot 47BR, WILLIAMS STEPHENS ADDITION to the City of Arlington, Tarrant County, Texas, according to plat recorded in Cabinet A, Slide 1622, Deed of Records of Tarrant County, Texas.